

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

WALTER CHRUBY,	:	
Plaintiff,	:	CIVIL ACTION NO. 3:17-1631
v.	:	(MANNION, D.J.)
		(SAPORITO, M.J.)
KIRK BEARJAR, et al.,	:	
Defendants.	:	

MEMORANDUM

Pending before the court is the August 27, 2018 report of Judge Joseph F. Saporito, Jr., which recommends that both the DOC Defendants' motion to dismiss (Doc. 19) and the Medical Defendants' motion to dismiss (Doc. 21) be granted in part and denied in part. Specifically, in response to DOC Defendants' motion to dismiss (Doc. 19), Judge Saporito's report recommends the following: plaintiff's retaliation claim against defendant Bearjar, with respect to the transfer of plaintiff from SCI Laurel Highlands to SCI Pittsburgh and plaintiff's deliberate indifference claim against defendants Kowalewski, Schrock, Luther, Wood, and Feather, with respect to plaintiff's cell occupancy status prior to August 1, 2016, be dismissed for failure to state a claim; and plaintiff's retaliation claim against defendant Bearjar, with respect to the February 2016 placement of a sick prisoner in the plaintiff's cell, plaintiff's deliberate indifference claim against defendants Kowalewski, Schrock, Luther, Wood, and Feather, with respect to plaintiff's cell occupancy status on or after August 1, 2016, and all other claims against the DOC

Defendants or Medical Defendants be permitted to proceed. The plaintiff and defendants have waived their opportunity to file objections to Judge Saporito's report. (Doc. 43).

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." [Fed.R.Civ.P. 72\(b\)](#), advisory committee notes; see also [Univac Dental Co. v. Dentsply Intern., Inc.](#), 702 F.Supp.2d 465, 469 (2010) (citing [Henderson v. Carlson](#), 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every Report and Recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept or modify, in whole or in part, the findings or recommendations made by the magistrate judge. [28 U.S.C. §636\(b\)\(1\)](#); Local Rule 72.31. Upon review, the report and recommendation of Judge Saporito will be adopted in its entirety.

The court has reviewed the reasons presented by Judge Saporito for recommending that both the DOC Defendants' motion to dismiss (Doc. 19) and the Medical Defendants' motion to dismiss (Doc. 21) be granted in part and denied in part. Because the court agrees with the sound reasoning that led Judge Saporito to the conclusions in his report and finds no clear error on the face of the record, the court will adopt the report in its entirety. An appropriate order shall issue.

s/ *Malachy E. Mannion*
MALACHY E. MANNION
United States District Judge

Date: September 19, 2018

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